

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Frost and Sullivan, Inc. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Years Ending 7/31/74-7/31/76. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

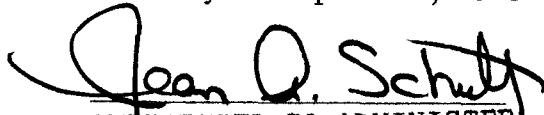
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 16th day of September, 1983, she served the within notice of Decision by certified mail upon Frost and Sullivan, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Frost and Sullivan, Inc.
c/o Mary Kearns
106 Fulton Street
New York, NY 10038

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
16th day of September, 1983.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Frost and Sullivan, Inc. :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Years Ending 7/31/74-7/31/76. :

State of New York
County of Albany

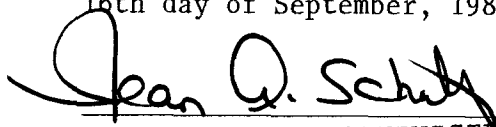
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 16th day of September, 1983, she served the within notice of Decision by certified mail upon Harvey Tanton the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harvey Tanton
Harvey Tanton & Co.
6 E. 43rd St.
New York, NY 10006

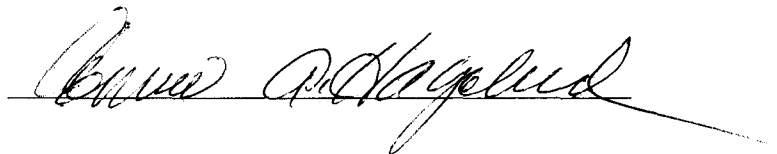
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
16th day of September, 1983.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

September 16, 1983

Frost and Sullivan, Inc.
c/o Mary Kearns
106 Fulton Street
New York, NY 10038

Dear Ms. Kearns:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Harvey Tanton
Harvey Tanton & Co.
6 E. 43rd St.
New York, NY 10006
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FROST & SULLIVAN, INC.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9A of the Tax Law for the Fiscal Years	:	
Ended July 31, 1974, July 31, 1975 and July 31,	:	
1976.	:	

Petitioner, Frost & Sullivan, Inc., 106 Fulton Street, New York, New York, 10038 filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9A of the Tax Law for the fiscal years ended July 31, 1974, July 31, 1975 and July 31, 1976 (File No. 24658).

Petitioner has waived a formal hearing and submitted its case for decision by the State Tax Commission based on the entire file. After due consideration, the Commission renders the following decision.

ISSUE

Whether petitioner was entitled to the investment tax credit provided by section 210.12 of the Tax Law with respect to certain assets it acquired during its fiscal years ended July 31, 1974, July 31, 1975 and July 31, 1976.

FINDINGS OF FACT

1. On July 1, 1977, the Audit Division issued three (3) separate Statements of Audit Changes to petitioner, Frost & Sullivan, Inc., pertaining to the petitioner's fiscal years ended July 31, 1974, July 31, 1975 and July 31, 1976, respectively, and indicating a recomputation of petitioner's corporation franchise tax liability for each fiscal year, as follows:

<u>YEAR</u>	<u>DEFICIENCY NUMBER</u>	<u>TAX DEFICIENCY</u>
FYE 7/31/74	C770701028C	\$3,251.27
FYE 7/31/75	C770701027C	368.00
FYE 7/31/76	C770701026C	594.00
TOTAL		<u>\$4,213.27</u>

2. Notices of Deficiency dated August 23, 1977 were issued to petitioner by the Audit Division, asserting tax due as shown on the above Statement of Audit Changes, plus interest. Two such notices, pertaining to the fiscal years ended July 31, 1975 and July 31, 1976, respectively, are contained in the file. No such notice for the fiscal year ended July 31, 1974 is contained in the file. However, an affidavit of issuance and mailing of a notice of deficiency for the fiscal year ended July 31, 1974 is contained in the file, and petitioner's petition protests, inter alia, assessment number C770710128C. Petitioner has raised no issue with respect to the issuance or receipt of a Notice of Deficiency for the fiscal year ended July 31, 1974.

3. The Statement of Audit Changes issued to petitioner for fiscal year 1974 explained the additional tax asserted as due for this year as follows:

"[a] net operating loss deduction cannot be applied to a federal operating loss. Disallowed investment credit because you are not in the production of goods by manufacturing. Alternative tax applies."

The Statements of Audit Changes for fiscal years 1975 and 1976 explained the additional tax asserted as due for these years resulted from the disallowance of investment credits claimed for each year (\$368.00 for 1975; \$594.00 for 1976) on the basis that petitioner was not engaged in the production of goods by manufacturing.

4. With respect to fiscal year 1974, the petition protests only the disallowance of the investment tax credit, and the Audit Division's answer affirmatively alleges that petitioner does not protest the Audit Division's

method of recomputation (insofar as such recomputation includes a Federal operating loss but excludes a net operating loss [deduction] as claimed by petitioner). Accordingly, only that portion of the asserted deficiency for fiscal year 1974 pertaining to the disallowed investment tax credit is contested by petitioner and remains at issue.

5. Petitioner was incorporated under the laws of the State of Maine on September 8, 1969, began doing business in New York on the same date, and on its New York State Corporation Franchise Tax Reports (Forms CT-3) for the fiscal years at issue lists its principal business activity as "reporting service".

6. Petitioner is principally engaged in the publishing of 200-300 page industry studies prepared by a staff of senior analysts and by industrial consultants. Each report includes a forecast of market size by product, and market share by company and by "end use". The reports include forecasts of technological and financial developments, and analyze selected segments of various industries including, but not limited to, data processing, communications, food, plastics, pollution, instrumentation, medical, aerospace, oceanography, optics, paper, education, energy, chemical, consumer products, leisure time, financial services and transportation.

7. Assets acquired by petitioner during the fiscal years at issue included the following equipment as listed on schedules attached to petitioners' tax returns for these fiscal years:

FYE 7/31/74:

<u>Description of Property</u>	<u>Date Acquired</u>
Thomas A 10 Collator	10/73
IBM - CPO & Related Equipment	3/74
Pitney Bowes - Postage Meter	3/74
Pitney Bowes Folding Machine & Attachment	3/74

Pitney Bowes Bulk Mail Machine	4/74
Addressograph Multilith	3/74
Pitney Bowes Collator	7/74

FYE 7/31/75:

<u>Description of Property</u>	<u>Year Acquired</u>
Folding Machine	(19)75
Rolling Unit	(19)75
Air Compressor	(19)75
Mailing Equipment	(19)75

FYE 7/31/76:

Mailing Equipment	10/31/75
Computerized Typewriter Machine	4/30/76
Offset Plate Processing Machine	5/31/76
Key punch Verifier Machine	7/31/76
Bruning Machine	7/31/76

8. Petitioner provided the following explanation in support of its assertion that the above-equipment should qualify for the investment tax credit allowed by section 210.12 of the Tax Law:

"[d]uring the fiscal years ended July 31, 1974, 1975 & 1976 Frost & Sullivan, Inc. acquired assets which it used in the assembly process of the above mentioned reports. Specifically during fiscal 1974 the company acquired IBM equipment used for storing, collating and assembling data in its reports. All of the other equipment indicated on form CT-46 was directly related to this assembly process. During fiscal 1975, the acquisitions included folding and mailing equipment; both of which are an integral part of the manufacturing process. The fiscal 1976 purchases included a computerized typewriter and keypunch verifier, both of which are used as a direct part of the manufacturing process..."

CONCLUSIONS OF LAW

A. That subdivision 12 of section 210 of the Tax Law provides an investment tax credit for corporate taxpayers with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which are depreciable pursuant to section 167 of the Internal Revenue Code, have a useful life of four years or longer, are acquired by

purchase as defined in section 179(d) of the Code, have a situs in New York and are principally used by the taxpayer in the production of goods by (inter alia) manufacturing, processing or assembling. Paragraph (b) of said subdivision states that:

"[f]or purposes of this paragraph, manufacturing shall mean the process of working raw materials into wares suitable for use or which gives new shapes, new quality or new combinations to matter which already has gone through some artificial process by the use of machinery, tools, appliances and other similar equipment."

B. That petitioner has failed to explain with any specificity either the method by which it "assembles" its reports, the activity which occurs during the "process of assembling and/or manufacturing" its reports, or the role played in this "process" by the equipment listed in Finding of Fact "7". The information provided by petitioner (see Finding of Fact "8") asserts only that the I.B.M. equipment acquired in fiscal year 1974 is used to store, collate and assemble data for the reports, and that the additional equipment acquired in fiscal years 1974 through 1976 (including mailing and folding equipment) is directly related to this "assembly" process or is a direct part of the "manufacturing" process. No description of the actual "assembly" or "manufacturing" process is included. Accordingly, petitioner has failed to provide sufficient evidence to establish that either the equipment listed herein or the activity in which petitioner is engaged constitutes a proper basis for entitlement to the investment tax credit within the meaning and intent of section 210.12 of the Tax Law.

C. That the petition of Frost & Sullivan, Inc., is hereby denied and the Notices of Deficiency asserting tax due of \$4,213.27, together with such interest as may be lawfully owing, are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

16 1983

Rodriguez
PRESIDENT

Francis R. Koenig
COMMISSIONER

[Signature]
COMMISSIONER